

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

April 26, 2022 at 1:00 p.m.

1. [21-90408](#)-B-13 SILVIA HERNANDEZ MOTION TO DISMISS CASE
[RDG](#)-4 Chinonye Ugorji 4-12-22 [[51](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to continue the matter to May 31, 2022 at 1:00 p.m.

Debtor's Motion to Confirm Plan, NUU-1, was heard and denied on March 1, 2022. Dkt. 48. Debtor has failed to file, set, and serve an amended/modified plan to date.

Debtor's counsel contacted the Trustee's office, requesting a continuation of the Trustee's Motion for Order Dismissing Case. Debtor's counsel is currently in Nigeria, unable to file a response, and will not be back in the United States until May 1, 2022. Trustee has requested the court continue the hearing from April 26, 2022 to May 31, 2022. Dkt. 55.

As Debtor's counsel is unable to file a response to Trustee's motion until May 1, 2022, the motion is continued to May 31, 2022.

The motion is ORDERED CONTINUED to May 31, 2022 for reasons stated in the minutes.

The court will issue an order.

April 26, 2022 at 1:00 p.m.

2. [22-90017](#)-B-13 IVAN/JANET AGASSI
[RDG](#)-1 David C. Johnston

MOTION TO DISMISS CASE
4-12-22 [[14](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to May 3, 2022 at 1:00 p.m.**

First, the Debtors are delinquent in the amount of \$200.00. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtors have failed to set a hearing on confirmation of Debtors' plan filed February 4, 2022.

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 29, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on May 3, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on May 3, 2022, at 1:00 p.m.

3. [22-90020](#)-B-13 KATHEY BROWN MOTION TO DISMISS CASE
[RG-2](#) Richard L. Sturdevant 4-11-22 [[24](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to May 3, 2022 at 1:00 p.m.**

First, the Debtor is delinquent in the amount of \$3,842.00. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor did not appear at the meeting of creditors set for March 2, 2022, nor did Debtor appear at the continued meeting of creditors set for March 16, 2022, nor did Debtor appear at the second continued meeting of creditors set for April 13, 2022 as required pursuant to 11 U.S.C. § 343. Debtor has also failed to provide confirmation of identity and social security number.

Third, the Debtor has not provided the Trustee with a copy of a federal income tax return for the most recent tax year a return was filed or a written statement that no such documentation exists. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(i).

Fourth, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fifth, the Trustee's objection to confirmation of Debtor's plan, RDG-1 was sustained by the court, and the plan's confirmation was denied on April 5, 2022. To date, the Debtor has failed to file, set, and serve an amended/modified plan.

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 29, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on May 3, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on May 3, 2022, at 1:00 p.m.

4. [22-90052](#)-B-13 GREGORY/VALISA NASH CONTINUED NOTICE OF INTENT TO
Thru #5 Pro Se DISMISS CASE IF DOCUMENTS ARE
NOT TIMELY FILED
2-15-22 [[3](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to dismiss case.

A Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents are Not Timely Filed was issued on February 15, 2022. The pro se Debtors have not filed any of the required documents listed in the Notice of Incomplete Filing. Additionally, no chapter 13 plan has been filed or set for a confirmation hearing, and Debtors did not appear at the meeting of creditors held on March 30, 2022.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [22-90052](#)-B-13 GREGORY/VALISA NASH ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
3-22-22 [[21](#)]

Final Ruling

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this final ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtors' failure to pay \$79.00 due March 17, 2022. The court's docket reflects that the default has not been cured.

The order to show cause is ORDERED SUSTAINED for reasons stated in the minutes and the case is DISMISSED.

The court will issue an order.

6. [21-90557](#)-B-13 DUANE SHUGART MOTION TO DISMISS CASE
[RDG](#)-2 Evan Livingstone 4-12-22 [[42](#)]

Final Ruling

The Chapter 13 Trustee has filed a motion to dismiss its pending motion. The motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

7. [21-90579](#)-B-13 MATTHEW/CELESTE JAMISON MOTION TO DISMISS CASE
[RDG-2](#) Jessica A. Dorn 4-12-22 [[34](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to deny the motion without prejudice.

Trustee filed the instant motion to dismiss case because Trustee's objection to confirmation, RDG-1, was heard and sustained on February 15, 2022, and Debtor had failed to file, set, and serve an amended/modified plan.

Subsequent to the filing of the Trustee's motion to dismiss case, the Debtor filed an amended plan on April 22, 2022. The confirmation hearing for the amended plan is scheduled for June 7, 2022.

Cause does not exist to dismiss this case. The motion is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

8. [19-90817](#)-B-13 GARY COOKSEY
[CCR](#)-1 Brian S. Haddix

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
4-4-22 [[162](#)]

THE DEL RIO EAST HOMEOWNERS'
ASSOCIATION, INC. VS.

Final Ruling

This matter was continued from April 19, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 22, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 169, granting annulment of the automatic stay retroactively to December 27, 2021, shall become the court's final decision. The continued hearing on April 26, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

9. [22-90052](#)-B-13 GREGORY/VALISA NASH
AP-2 Pro Se
See Also #s 4-5
U.S. BANK TRUST NATIONAL
ASSOCIATION VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
4-1-22 [[26](#)]

Final Ruling

This matter was continued from April 19, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 22, 2022. Select Portfolio Servicing, Inc., as servicing agent for U.S. Bank Trust National Association ("Movant"), filed a response. In accordance with Movant's response, the court's conditional ruling at dkt. 37 concerning the motion for relief from automatic stay will be amended.

The court's decision is to grant the motion for relief from automatic stay.

U.S. Bank Trust National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1336 Phlox Drive, Patterson, California, 95363 (the "Property"). Movant has provided the Declaration of Lizette Torres to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Torres Declaration states that Movant is in possession of the promissory note ("Note") that was executed by Debtors. Pursuant to the Deed of Trust referenced in the motion, all obligations of the Debtors under and with respect to the Note and Deed of Trust are secured by the Property.

Discussion

Movant seeks confirmation that the stay in this case is not in effect as to a real property located at 1336 Phlox Drive, Patterson, California, 95363. Movant is the beneficiary of the Note and Deed of Trust secured by the Property.

Section 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

On May 11, 2021, the Debtors filed a Chapter 13 case (case no. 21-90230). That case was dismissed on June 1, 2021 due to the Debtor's failure to file documents. Dkt. 16.

On September 27, 2021, the Debtors filed another Chapter 13 case (case no. 21-90465). That case was dismissed on October 19, 2021 due to the Debtor's failure to file documents. Dkt. 13.

The debtor filed the instant Chapter 13 case on February 15, 2022.

The court has reviewed the dockets of the prior two cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases.

Accordingly, the motion will be granted. The automatic stay did not go into effect upon the filing of the instant case on February 15, 2022. See 11 U.S.C. § 362(c)(4)(A)(ii) & (j).

Finally, the court will grant prospective relief under § 362(d)(4). See *Benzeen, Inc. v. JP Morgan Chase Bank (In re Benzeen, Inc.)*, 2018 WL 6627275 at *4 (9th Cir. BAP Dec. 18, 2018) (noting that request for § 362(d)(4) relief survives dismissal and

foreclosure); *Azkam v. U.S. Bank N.A.*, 2020 WL 1700028 at *3 (E.D. Cal. April 8, 2020) ("An order granting relief under [§ 362(d)(4)] may survive the dismissal of the bankruptcy in some cases."). That section prescribes:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .

"with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting such real property."

The Debtor has filed bankruptcy a total of three times within the past year in an effort to thwart Movant from foreclosing on the Property. In each of the two prior bankruptcies, Debtor's case was dismissed for failure to file necessary schedules and other related documents. Additionally, the chapter 13 Trustee has filed a motion to dismiss Debtor's instant bankruptcy case for the same reason, which the court has granted at Item #5. The court finds that the Debtor's multiple bankruptcy filings were part of a scheme to delay, hinder, or defraud creditors from exercising their rights against the Property.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

This order shall be binding in any other case purporting to affect the Property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.